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STREETS & STEELE
13831 NORTHWEST FREEWAY
SUITE 355
HOUSTON, TX 77040

EXAMINER

PARSLEY, DAVID J

ART UNIT PAPER NUMBER

3643

DATE MAILED: 02/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/660,311

Applicant(s)

CORSO ET AL.

Examiner

David J. Parsley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5,7,9-12,14-24 and 26-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5,7,9-12,14-24 and 26-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Detailed Action

Amendment

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12-21-05 has been entered.

This office action is in response to applicant's amendment dated 12-21-05 and this action is non-final.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 10 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S.

Patent No. 3,304,645 to Hardesty et al.

Referring to claim 1, Hardesty et al. discloses a fishing apparatus comprising, a unitary buoyant board-like support member – at 18, having at least a pair of opposing gripping apertures

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or indentations provided therein – at 32, the gripping apertures or indentations each being disposed adjacent respective opposing edges of the support member and each being elongated along an axis that is substantially parallel to the respective opposing edges – see for example figures 1-3, to facilitate the insertion of the fingers of both hands of a user in the respective pair of gripping apertures or indentations simultaneously – see for example figures 1-3, thereby providing for balanced hand gripping of the support member by a user, a fish container – at 16-22, secured to the support member for holding fish – see for example figures 1-3, and a first bait container – at 16-22, secured to the support member for storing bait – see for example figures 1-3.

Referring to claim 10, Hardesty et al. discloses a tether – at 36, secured at or near one of its ends to the support member – see figure 1, the tether adapted for being secured at or near the other of its ends to a user – see for example figures 1-3.

Referring to claim 28, Hardesty et al. discloses a fishing apparatus comprising, a unitary buoyant board-like support member – at 18, having at least a pair of opposing gripping apertures or indentations provided therein – see proximate 32 as seen in figures 1 and 3, the gripping apertures or indentations each being disposed adjacent respective opposing edges of the support member – see at 32 in figures 1 and 3, and each being elongated along an axis that is substantially parallel to the respective opposing edges to facilitate insertion of the fingers of both hands of a user in the respective pair of gripping apertures or indentations simultaneously – see for example at 32 in figures 1 and 3, thereby providing for balanced hand gripping of the support member by a user – see for example figures 1 and 3, a fish container – at any of 16,22, secured to the support member – at 18 – see for example figures 1-3, for holding live fish, the fish container

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being equipped with one or more apertures – at 24, for passage of ambient water therethrough – see for example figures 1-3, and a bait container – at any other of 16,22, secured to the support member – at 18 – see figures 1-3, for holding live bait, the bait container being equipped with one or more apertures for passage of ambient water therethrough – see for example at 24 in figures 2-3.

Claims 12 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,357,127 to Barradale.

Referring to claim 12, Barradale discloses a fishing apparatus comprising, a unitary buoyant board-like support member – at 15 or 19, a fish container – at 10-14, secured to the support member for holding fish, the fish container being equipped with one or more apertures – at 45, for passage of ambient therethrough – see for example figures 1-3, a first bait container – at 18, secured to the support member for storing bait, the first bait container being equipped with one or more apertures – see figures 1, 3-4, for passage of ambient water therethrough, and a first upright tubular gear container – at 20,21, secured to and extending substantially above the support member – see figures 1-2, for supporting elongated fishing gear in a substantially vertical position above the support member – see for example figures 1-4. Barradale does not disclose the tubular gear container supports elongated fishing gear in a substantially vertical position above the support member. These limitations have been considered however, these limitations constitute intended use/functional limitations in an apparatus claim. Therefore, it is deemed that the device of the Barradale reference is capable of performing the function as claimed in that the size of the interior of the gear container – at 20-21 is of sufficient size to hold

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fishing gear such as rods or reels or lures or sinkers or bobbers in any orientation including a vertical orientation as seen in figure 1.

Referring to claim 24, Barradale discloses a fishing apparatus comprising a unitary buoyant board-like support member – at 15,17 or 19, a fish container – at 10-14, secured to the support member adjacent one end thereof for holding live fish – see for example figures 1-2, the fish container being equipped with one or more apertures – at 45, for passage of ambient water therethrough – see for example figures 1-3, a first bait container – at 18, secured to the support member adjacent another end of thereof opposite the one end for holding live bait – see for example figures 1-3, the first bait container being equipped with one or more apertures for passage of ambient water therethrough – see for example at 18 in figures 1 and 3-4, whereby the fish container – at 10-14, and first bait container – at 18, oppose one another – see for example figure 1 where the first bait container is located opposite the bottom and sides of the container – at 10-14, and a second bait container – at 20,21, secured to the support member between the fish container and the first bait container for holding artificial bait – see for example figures 1 and 3. Barradale does not disclose the second container holds artificial bait. However, this limitation is an intended use (functional) limitation in an apparatus claim and it is deemed that the device of Barradale is capable of holding artificial bait in the container – at 21 since as seen in figures 1 and 3 the container is of sufficient size and shape to house artificial bait.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hardesty et al. as applied to claim 1 above.

Referring to claim 2, Hardesty et al. further discloses a cleat – at 34 for tethering to a user – see at 36 in figure 1. Hardesty et al. does not disclose the cleat is mounted on the support member – at 18. However, it is deemed that changing the location of the cleat – at 34, from one position on the device of Hardesty et al. to another position such as on support member – at 18, would have been obvious to one of ordinary skill in the art, so as to allow for the tether to not be submerged in the water thus making it easier for the fisherman to manipulate the container in the water.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hardesty et al. as applied to claim 1 above, and further in view of U.S. Patent No. 3,357,127 to Barradale.

Hardesty et al. further discloses apertures – at the openings into the containers – at 16-22 via the lids – at 28, in the support member – at 18. Hardesty et al. does not disclose the support member has a securing aperture therethrough for tethering to a user. Barradale does disclose the support member – at 10, has a securing aperture therethrough – see at 14 in figure 1, for tethering to a user – see at 12 in figure 1. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Hardesty et al. and add the securing aperture for a tether of Barradale, so as to allow the fisherman to move the device through the water without lifting during use.

Claims 4, 7, 9, 11 and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hardesty et al. as applied to claim 1 above, and further in view of U.S. Patent No. 6,014,833 to Benavidez.

Referring to claim 4, Hardesty et al. further discloses a buoyant material – at 46. Hardesty et al. does not disclose the support member is filled with an expanded polystyrene material. Benavidez does disclose the support member is filled with an expanded polystyrene material – see for example column 3 lines 37-51. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Hardesty et al. and add the support member filled with polystyrene of Benavidez, so as to allow for the device to float on water and thus be easily accessible to the user.

Referring to claim 7, Hardesty et al. does not disclose the support member has four gripping indentations therein. Benavidez does disclose the support member has four gripping indentations provided therein – see for example at 68,69 in figure 1. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Hardesty et al. and add the four gripping indentations of Benavidez, so as to allow for the device to be easily manipulated by the user.

Referring to claim 9, Hardesty et al. does not disclose the support member has four gripping apertures therethrough. Benavidez does disclose the support member has four gripping apertures therethrough – see at 68,69 in figure 1. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Hardesty et al. and add the four gripping apertures of Benavidez, so as to allow for the device to be easily manipulated by the user.

Referring to claim 11, Hardesty et al. does not disclose the support member is equipped for measuring the length of a fish. Benavidez discloses the support member is equipped for measuring the length of a fish – see at 55. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Hardesty et al. and add the support member equipped for measuring a fish of Benavidez, so as to allow the user to quickly determine the size of a fish.

Referring to claim 20, Hardesty et al. further discloses a portion of the first bait container – at 16,22, extends downwardly beneath the support member – at 18 – see for example figures 1-3. Hardesty et al. does not disclose the support member has a bait-holding aperture sized and shaped to receive the first bait container therethrough. Benavidez does disclose the support member – at 10-16, has a bait-holding aperture – see proximate 21, sized and shaped to receive the first bait container – at 21,22 – see for example figure 1. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Hardesty et al. and add the first bait container of Benavidez, so as to allow for live bait to be maintained in the device during use.

Referring to claim 21, Hardesty et al. as modified by Benavidez further discloses the first bait container is adapted for holding live bait – see for example at 18 in Hardesty et al. and column 3 lines 58-61 of Benavidez.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hardesty et al. as applied to claim 1 above, and further in view of U.S. Patent No. 4,918,853 to Bascom et al. Hardesty et al. does not disclose the support member has a fluorescent outer surface. Bascom et al. does disclose the support member has a fluorescent outer surface – see for example column 4 lines 19-24. Therefore it would have been obvious to one of ordinary skill in the art to take the

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device of Hardesty et al. and add the fluorescent outer surface of the support member of Bascom et al., so as to allow for the device to be easily visible to the user.

Claims 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hardesty et al. as modified by Benavidez as applied to claim 20 above, and further in view of U.S. Patent No. 4,794,723 to Arnold et al.

Referring to claim 22, Hardesty et al. as modified by Benavidez further discloses the bait container – at 21 of Benavidez is substantially cylindrical – see for example figure 1 of Benavidez. Hardesty as modified by Benavidez does not disclose the bait container has an openable lid. Arnold et al. does disclose the bait container is substantially cylindrical – see figures 3-4, and has an openable lid – at 52. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Hardesty et al. as modified by Benavidez and add the bait container with cylindrical shape and lid of Arnold et al., so as to allow for the fisherman to easily store and remove fish from the bait container.

Referring to claim 23, Hardesty et al. as modified by Benavidez does not disclose the bait container is made of plastic. Arnold et al. does disclose the bait container is made of plastic – see for example column 5 lines 46-50. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Hardesty et al. as modified by Benavidez and add the bait container made of plastic of Arnold et al., so as to make the device lightweight and durable.

Claims 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barradale as applied to claim 12 above, and further in view of U.S. Patent No. 6,405,478 to Westley.

Referring to claim 14, Barradale does not disclose a utility bar secured to the support member, the utility bar having a plurality of storage apertures therethrough for receiving fishing

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gear. Westley does disclose a utility bar – at 12,16,20, secured to the support member – at 14, the utility bar having a plurality of storage apertures therethrough – see proximate 36-42 in figures 1-3, for receiving fishing gear – at 36 or 38-42 – see for example figures 1-3. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Barradale and add the utility bar of Westley, so as to allow for a fisherman to easily obtain equipment from the device.

Referring to claim 15, Barradale as modified by Westley further discloses at least three upright tubular gear containers – at 34 or 36, secured to and extending substantially above the support member – see for example figures 1-3 of Westley, and wherein the utility bar – at 12,16,20, is connected across the three upright gear containers at an elevation above the upper surface of the support member – see for example figures 1-3 of Westley.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hardesty et al. as applied to claim 1 above, and further in view of U.S. Patent No. 5,394,639 to Tentler. Hardesty et al. does not disclose the support member is equipped with at least one rudder for stability while fishing, the rudder having at least two flat sides. Tentler does disclose the support member – at 14-20, is equipped with at least one rudder – at 38, for stability while fishing, the rudder – at 38, having at least two flat sides – see for example figures 2-5. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Hardesty et al. and add the rudder of Tentler, so as to allow for the device to move more quickly and under more control through the water.

Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hardesty et al. as applied to claim 1 above, and further in view of U.S. Patent No. 6,269,587 to Wallace.

Referring to claim 17, Hardesty et al. further discloses the fish container – at 16,22, extends downwardly beneath the support member – see for example figures 1-3. Hardesty et al. does not disclose the support member has a fish-holding aperture sized and shaped to receive the fish container therethrough. Wallace does disclose the support member – at 22, has a fish-holding aperture – at 20, sized and shaped to receive a fish container – at 18, therethrough – see for example figure 1. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Hardesty et al. and add the fish container of Wallace, so as to allow for fish in the fish container to be kept alive in the water in which the device is placed.

Referring to claim 18, Hardesty et al. as modified by Wallace further discloses the fish container is a generally tubular-shaped net – at 18,58, that permits the submergence of fish disposed therein while fishing – see for example figure 1 of Wallace.

Referring to claim 19, Hardesty et al. as modified by Wallace further discloses the net has a mouth – see proximate 56 in figure 1 of Wallace, that is adjustable between an open configuration and a closed configuration – see for example at 56 in figure 1 of Wallace.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barradale as applied to claim 24 above, and further in view of Wallace.

Referring to claim 26, Barradale further discloses the second bait container – at 20,21, is secured to the upper surface of the support member – see figures 1 and 3. Barradale does not disclose the second bait container is a plastic box having an openable lid and a plurality of bait holding compartments. Wallace does disclose the second bait container – at 30,32 of Wallace, is secured to the upper surface of the support member – see figure 1 of Wallace, and includes at least one box – at 30,32, having an openable lid – see figure 1, and a plurality of bait holding

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compartments – see for example figure 1 of Wallace. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Barradale and add the bait container with openable lid of Wallace, so as to allow for the bait to be protected during use, transporting and storage. Barradale as modified by Wallace does not disclose the second bait container is plastic, however it would have been obvious to one of ordinary skill in the art to take the device of Barradale as modified by Wallace and add the container made of plastic, so as to allow for the device to be both lightweight and durable.

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barradale as applied to claim 25 above, and further in view of U.S. Patent No. 5,802,760 to Campbell. Barradale further discloses the second bait container – at 20,21, is secured to the upper surface of the support member – at 17 or 19 – see figures 1 and 3. Barradale does not disclose the second bait container includes a plurality of stacked plastic boxes each having an openable lid and a plurality of bait holding compartments. Campbell does disclose the second bait container is secured to the upper surface of the support member and includes a plurality of stacked plastic boxes – at 5-9, each having an openable lid and a plurality of bait holding compartments – see for example figure 1. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Barradale and add the stacked compartments of Campbell, so as to allow for the device to hold more fishing equipment.

Response to Arguments

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4. Regarding claims 1-3, 10 and 28, the Hardesty et al. reference US 3304645 discloses a unitary buoyant board-like support member – a 18 as seen in figures 1-3, with gripping indentations – at 32 as seen in figures 1 and 3, that are configured to provide balanced hand gripping of the support member by a user as seen in column 2 lines 50-57.

Regarding claims 12 and 24, the Barradale reference US 3357127 discloses a unitary board-like support member – at 15 or 19 as seen in figures 1 and 3, with a fish container – at 10-14, secured to the support member adjacent one end thereof as seen at either of the ends of the fish container – at 10-14 as seen in figures 1 and 3. The Barradale reference further discloses the fish container – at 10-14 and the first bait container – at 18 oppose one another as seen in figures 1-3 where the first bait container – at 18 opposes the bottom and sides of the fish container – at 10-14.


Regarding claims 5, 14-19, 22-23 and 26-27, applicant relies upon the arguments to independent claims 1, 12 and 24 therefore see the response to these arguments in this paragraph of this office action above.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Parsley whose telephone number is (571) 272-6890. The examiner can normally be reached on Monday-Friday from 8am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


David Parsley
Patent Examiner
Art Unit 3643